IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2007

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THE HONOURABLE MR. JUSTICE P. JYOTHIMANI

Writ Petition No.5654 of 2003
and WMP.No.1370 of 2007

M.Jayanthi .. Petitioner

Versus

1.The District Educational Officer
Chennai East, Choolaimedu, Chennai 94.

2.The Secretary
The Muthialpet Higher Secondary
School, No.83, Thambu Chetty Street
Chennai. .. Respondents

amended as per order dated
11.7.07 and made in WPMP.1455/07

Writ petition filed under Article 226 of Constitution of India praying for issue of a Writ of Certiorarified Mandamus, to call for the records relating to the order of the first respondent dated 14.05.2002, issued in the Ref.No.Mu.Mu.No.1920/aa3/2001 and quash the same in so far as the petitioner is concerned and further direct the first respondent to approve the appointment of the petitioner with effect from 14.08.2000 and to award all consequential benefits.

For Petitioner : Mr.V.Sanjeevi
For Respondents : M/s.Dakshayini Reddy
Government Advocate(Education)

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ORDER

The writ petitioner was appointed as Secondary Grade Assistant in the second respondent school on 14.08.2000. It is the case of the petitioner that the second respondent school has claimed minority status and by virtue of the interim order of the Civil Court from 04.11.1988, the said school has been enjoying the rights of minority, in which event, the appointment of teachers in such minority school need not require approval from the authorities. It is also not in dispute that ultimately by a Judgement dated 13-02-2001, this Court in a Second Appeal rejected its claim of minority status. The petitioner and three other persons appear to have been appointed in the second respondent school on 14.08.2000, when the second respondent school was enjoying minority status and it is also not in dispute that from

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14.08.2000, the petitioner has been working in the second respondent school. On 14.05.2002, the first respondent passed the impugned order refusing to approve the appointment of the petitioner on the ground that the second respondent being a non-minority institution, should have made appointment from the sponsorship of employment exchange and also followed the provisions of the Tamil Nadu Recognised Private Schools (Regulation)Act.

2. Mr.Sanjeevi, learned counsel appearing for the petitioner informs this Court that subsequently the Government, by G.O.Ms.No.109 School Education(D2) Department, dated 10.07.2006, has considered the case of the appointments made in the second respondent school, namely, Muthialpet Boys Higher Secondary School as well as Dr.R.S.M. Girls Higher Secondary School, Chennai, by referring to the Judgement in the Second Appeal and also representations stated to have been made by the management of the said Schools stating that the persons who were appointed during the time when there were interim orders conferring minority status and such persons have been in services for many years and therefore, at this stage, if they are terminated, they would not get employment elsewhere and taking a lenient view and based on the suggestions of the Director of School Education and based on the proposal has passed the following order:

> " Muthialpet Boys Higher Secondary School and Dr.R.S.M.Girls Higher secondary school, Chennai were started in 1857. These schools enjoyed all the benefits as per the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and Rules 1974. The then Management filed the suit in O.S.No.1392 of 1977 before the City Civil Court at Madras for declaration that the institutions are denominational institutions belonging to the Religious denomination of Berri Chettiar community. The prayer was not granted by the City Civil Court and the suit was dismissed on 08.09.1981. Therefore, the management preferred an Appeal Suit No.24 of 1982 before the Court of Principal Judge, City Civil Court at Madras and the appeal was dismissed on 29.09.1986. The management preferred second appeal S.A.No.1058 of 1988 again in the High Court of Madras and also for a temporary injunction pending the appeal. An interim injunction was granted and the same was made absolute in the High Court Order dated 1.12.1989. The second appeal petition S.A.No.1058/88 filed by the Management of these schools in the High Court, Chennai was dismissed by the High Court on 13.02.2001.
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> 2. Based on the above Judgement, the approval of four persons (Thiruvengadam and 3 others), who were appointed during the period in which these schools were functioning with minority status were rejected

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by the Director of School Education. They have submitted representations for approval of their appointments. Subsequently instructions were issued by the Government to cancel 26 other similar appointments of teaching and non-teaching staff of those 2 schools. Those teaching and non-teaching staff numbering 26, who were appointed by the management which enjoyed minority status, filed writ petitions before the High Court of Judicature at Madras for approval of their appointments.

3. The entire issue has been examined by the Government in consultation with the Director of School Education. The Director of School Education in the reference third read above has stated that since all the above mentioned (26+4) 30 Teaching and Non-teaching staff of Muthialpet Boys Higher Secondary School and Dr.R.S.M. Girls Higher Secondary School, Chennai are working for a long period and they are not able to get employment anywhere in Tamil Nadu, this case may be considered as a special case and requested the orders of the Government for approval of the above (26+4) 30 Teaching and Non-teaching staff of those schools. The Government have decided to accept the proposal of the Director of School Education.

4. Accordingly, the Government direct that (1) the appointments of all the 26 teaching /non teaching staff appointed in the Muthialpet /Dr.R.S.M.Girls Higher Secondary Schools during the period in which the schools have enjoyed the minority status shall be approved and the dismissal order be withdrawn, subject to the condition that they should withdraw the case filed in High Court by them against the Government and (2) the appointment of 4 persons who were dismissed by the management and appealed to Government shall also be approved.

5. The Director of School Education is directed to submit necessary proposals for relaxation of Rules in regularising the services of the employees in due course."

3. Ms.Dhakshayini Reddy, learned Government Advocate (Education), would raise an objection that in the Government Order, it is stated that in respect of 26 teachers, their appointment will be approved subject to the condition that the writ petitions filed are withdrawn. It is seen in the Government Order, that apart from the 26 teachers, there are four appointments out of whom the petitioner is one. Therefore, on the face of the said Government Order, there is no difficulty to come to the conclusion that the Government has unequivocally come to a decision to grant approval for the appointment of the petitioner

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for the reasons stated therein, apart from the appointment of other teaching and non-teaching staff.

4. The contends of the above Government Order is recorded. In the light of the above said position, the first respondent is directed to pass appropriate orders regarding the approval of the appointment of the petitioner within a period of four weeks form the date of receipt of a copy of the order.

5. In view of the above order, the impugned order of the first respondent is set aside and the writ petition is allowed in the above terms. No costs. Consequently WMP.No.1370 of 2007 is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Ksr

To

1.The District Educational Officer
Chennai East, Choolaimedu, Chennai 94.

2.The Secretary
The Muthialpet Higher Secondary
School, No.83, Thambu Chetty Street
Chennai.

1 cc to Mr.V.Sanjeevi, Advocate, Sr. 42055

W.P.No.5654 of 2003

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